

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

TONY J. CAYUELA

No. 18 CR 836-1

Judge Jorge L. Alonso

GOVERNMENT'S POSITION PAPER AS TO SENTENCING FACTORS

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 18 CR 00835
)
ANEES USMANI,) Chicago, Illinois
) September 30, 2020
Defendant.) 3:00 p.m.

TRANSCRIPT OF PROCEEDINGS - Sentencing hearing
BEFORE THE HONORABLE EDMOND E. CHANG

APPEARANCES:

For the Plaintiff: HON. JOHN R. LAUSCH, JR.
United States Attorney
BY: MR. RAJNATH P. LAUD
Assistant United States Attorney
219 South Dearborn Street, Suite 500
Chicago, Illinois 60604
(312) 353-5300
rajnath.laud@usdoj.gov

For the Defendant: PISSETZKY LAW
BY: MR. GAL PISSETZKY
35 East Wacker Drive, Suite 1980
Chicago, Illinois 60601
(847) 736-7756
gal@pissetzkylaw.com

ALSO PRESENT: MS. REBECCA FOWLIE,
United States Probation Office

ALSO PRESENT TELEPHONICALLY:

MS. KATHY KIRIKLAKIS,
United States Probation Office

Court Reporter: Judith A. Walsh, CSR, RDR, F/CRR
Official Court Reporter
219 South Dearborn Street, Room 2118
Chicago, Illinois 60604
(312) 702-8865
judith_walsh@ilnd.uscourts.gov

1 (Proceedings heard in open court:)

2 THE CLERK: 18 CR 835, USA versus Anees Usmani.

3 THE COURT: All right. Can I get the appearance of
4 the government?

5 MR. LAUD: Yes. Good afternoon, your Honor. Raj
6 Laud on behalf of the United States.

7 THE COURT: All right. Defense counsel?

8 MR. PISSETZKY: Good afternoon, your Honor. Gal
9 Pissetzky for Mr. Usmani who's sitting beside me.

10 THE COURT: All right. Good afternoon.
11 And for Probation?

12 PROBATION OFFICER FOWLIE: And good afternoon again,
13 your Honor. Rebecca Fowlie on behalf of the probation
14 department.

15 THE COURT: All right. Good afternoon to you as
16 well.

17 Okay. We are here for sentencing. Is the government
18 ready to proceed?

19 MR. LAUD: Yes, your Honor.

20 THE COURT: And the defense?

21 MR. PISSETZKY: Yes.

22 THE COURT: Okay. Mr. Usmani, I'm going to start
23 with you. I just want to make sure you've had enough time to
24 prepare for today's sentencing. And as I asked you awhile ago
25 now, I'm going to also ask about whether you're still

1 satisfied with Mr. Pissetzky's representation of you. So
2 because you'll be answering these questions and making
3 statements in court, you do have to be put under an oath to
4 tell the truth.

5 And I'll ask the courtroom deputy to do that now.

6 THE CLERK: Would you please raise your right hand?

7 (Defendant sworn.)

8 THE DEFENDANT: Yes.

9 THE CLERK: Thank you.

10 THE COURT: All right. Okay. So first, have you had
11 a chance to read the presentence report in the case? It had
12 information about you, about the offense, about the sentencing
13 guidelines, your employment record, and so on.

14 THE DEFENDANT: Yes.

15 THE COURT: All right. And have you had a chance
16 also to prepare for today's sentencing by talking with
17 Mr. Pissetzky about the case?

18 THE DEFENDANT: Yes.

19 THE COURT: And are you still satisfied with his
20 representation of you in this case?

21 THE DEFENDANT: Yes.

22 THE COURT: For example, has he spent enough time
23 with you in preparing for today?

24 THE DEFENDANT: Yes.

25 THE COURT: And when you've asked him questions, did

1 he at least try to answer them?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. All right. That's all I have for
4 you for right now.

5 On the presentence report itself, other than the
6 objections and corrections that were filed in writing which I
7 believe basically was, there was one typo and then the defense
8 objected to the drug quantity and the gun enhancement. Other
9 than those, are there any other objections or corrections?
10 For the government?

11 MR. LAUD: No, your Honor.

12 THE COURT: Mr. Pissetzky?

13 MR. PISSETZKY: No, your Honor.

14 THE COURT: All right. Then other than those
15 objections, I adopt the presentence report as based on
16 reliable and detailed information.

17 But on the corrections, I believe Paragraph 74, the
18 government pointed out in a footnote that there's a graduation
19 year that is probably off by a decade. And let's see. Was
20 it -- maybe it was in Paragraph -- which paragraph was it?

21 MR. LAUD: Your Honor, I believe it was Paragraph 72.

22 THE COURT: 72.

23 MR. LAUD: Let me just open up my PSR.

24 THE COURT: Okay. No --

25 MR. LAUD: It's not --

1 THE COURT: It's '91.

2 MR. PISSETZKY: Yes.

3 MR. LAUD: '91. I see it.

4 THE COURT: All right. I might have mis-transposed
5 it myself. Okay. So you think the graduation year was 1995?

6 MR. LAUD: I think that's approximately when he
7 graduated from high school, your Honor. And that's my
8 supposition. But I don't have independent knowledge of when
9 he graduated.

10 THE COURT: Mr. Pissetzky?

11 MR. PISSETZKY: That's correct. He -- that's when he
12 finished high school. He never really received his high
13 school diploma. And he actually recently has got his GED.
14 But that's the right date, 1995.

15 THE COURT: Okay. So let's -- because the BOP will
16 want to know this. So let's change that sentence to say, "The
17 defendant recalled attending Mather High School in Chicago,
18 Illinois, and his last year of attendance was 1995."

19 And then is the GED information in here somewhere?

20 MR. LAUD: I don't believe so, your Honor. I don't
21 recall seeing that.

22 THE COURT: Was this something recent, Mr. Pissetzky?

23 MR. PISSETZKY: Yes.

24 THE COURT: While he's been detained here?

25 MR. PISSETZKY: Correct.

1 THE COURT: I see. And -- okay. So let's do this.

2 Can you --

3 MR. PISSETZKY: And he received his GED September
4 28th, 2020, so just a couple of days ago.

5 THE COURT: Okay. And that's from the MCC?

6 MR. PISSETZKY: Yes.

7 THE COURT: All right. Does he have verification of
8 that there?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. So let me ask, rather than hand
11 things during the pandemic, if you can -- Mr. Pissetzky, are
12 you comfortable taking something from him?

13 MR. PISSETZKY: Yes.

14 Can you take it out?

15 THE COURT: All right. So why don't you, after the
16 hearing, just scan it in and email it to the probation office,
17 to the government, and you might as well email it to me as
18 well. And then if the probation office, you know, is able to
19 verify this, then we'll include another sentence in the
20 presentence report. All right?

21 MR. PISSETZKY: Sure.

22 THE COURT: Okay. Then let's talk about the drug
23 quantity and the gun enhancement. So obviously, I've read the
24 back and forth which is quite detailed. And does either side
25 want to add additional argument or emphasize anything in

1 particular? For the government?

2 MR. LAUD: Your Honor, I think for the government, I
3 just do want to emphasize that it's a broad range of 5 to 15.
4 And for all the reasons we've argued, I think 11 kilograms is
5 a very conservative estimate. It's clearly over the 5.

6 And as to whether or not this was truly relevant
7 conduct as addressed in the defendant's response to the
8 government's sentencing memo, I would just note that this
9 crime actually has a fairly unique method of drug distribution
10 involving the retail phone line, drivers going out to deliver
11 cocaine. And that's exactly what Mr. Usmani described all of
12 that 11 kilograms of conduct being.

13 So the defense relied on some cases involving
14 somebody who had sort of very disjointed drug dealing or drug
15 dealing that was very different in character. And this is
16 really the same ongoing business that the defendant operated
17 throughout the entire time period leading to the 11-kilogram
18 conservative quantity estimate. So that's all properly being
19 treated as relevant conduct here.

20 THE COURT: So on that -- so if I credit what he said
21 in the post-arrest interview in terms of how long and how he
22 was dealing on and off and the average quantities, whether --
23 it is a separate question whether it constitutes relevant
24 conduct. At least in the brief, I saw very few details on the
25 similarity and regularity and so on.

1 Is the post-arrest interview somewhere in the
2 government's version or in the record?

3 MR. LAUD: The post-arrest is summarized in the
4 government's version. I don't believe that the video
5 recording or the 302 of the entire interview is a part of the
6 government's version which I could supplement. My
7 understanding is again the character of the dispute was more,
8 should this be treated as relevant conduct.

9 I will say, we also have the -- I'm trying to think
10 of the right way to articulate this. But at least from the
11 time period of the wire investigation through the time period
12 of Mr. Usmani's arrest, there's references to the ongoing
13 retail nature of the business. There's also his phone was
14 recovered, and there's evidence from that.

15 So I suppose that if additional facts are necessary
16 to resolve this dispute then that may be something we need to
17 provide your Honor with more information. But I will say
18 that, I mean, it's very clear from the defendant's admissions
19 and the descriptions of the transactions that are contained in
20 the government's version that his business when he has been
21 selling drugs has been the retail cocaine distribution
22 business using the drivers, using the workers.

23 Some of the drivers continued -- who have already
24 been sentenced by your Honor continued working for him after
25 the wiretap period ended, and their admissions in the plea

1 agreement your Honor can accept. There are specific instances
2 of larger quantities of drug trafficking like the 500-some
3 kilograms that were recovered from Mr. Usmani's home during
4 the wiretap investigation, and I have not included those in
5 the 11-kilogram estimate.

6 THE COURT: Right. I understand that. I think the
7 question is going all the way back to 2008 is --

8 MR. LAUD: Yes. And I'm sorry, your Honor. The drug
9 quantity, 11 kilograms is not based on going all the way back
10 to 2008.

11 THE COURT: Well, I think the calculation was it's
12 about ten years, and we'll do two years of that just to have a
13 conservative estimate.

14 MR. LAUD: Yes.

15 THE COURT: Right. But if it started in 2008 and was
16 on and off for those ten years, at least the brief -- I think
17 you supplied the video of the post-arrest to the probation
18 office as part of your version. I don't have and did not ask
19 for the video.

20 The brief does not give the kind of detail about even
21 him admitting -- so you're saying he admitted in the
22 post-arrest interview that he's been selling on and off from
23 either 2007 or 2008, let's call it 2008 to shorten the time
24 period, and that it was the same kind of operation where he
25 had drivers delivering cocaine or something else?

1 MR. LAUD: No, it's something else, your Honor. The
2 admissions in the post-arrest about the operation of the
3 drivers delivering cocaine relates to the time period that
4 we're considering as relevant conduct, I would say after his
5 state case, his state conviction. And then he also made
6 admissions regarding the conduct that underlie that state
7 conviction which was similar.

8 One difference that comes to mind is that he was
9 using taxi drivers for the conduct in the state case, and the
10 sort of use of taxi drivers does not form part of this
11 conspiracy. And so we have tried to cabin it to the conduct
12 after the state case for a number of reasons including the
13 state case did seem to result in a temporary disruption in
14 Mr. Usmani's drug trafficking.

15 I think he described Tony Cayuela either being given
16 or taking his dispatch phone that he used for the old
17 business, and Mr. Cayuela kind of took some of those old
18 customers. And so then when Mr. Usmani started back up again,
19 he had to essentially reestablish himself.

20 So I'm not arguing that conduct going back prior to
21 his state case should be considered relevant conduct. I will
22 obviously talk about it when we get to the 3553(a) factors.
23 I'm just focusing on the two-year period after he's caught and
24 it leads to the state prosecution.

25 MR. PISSETZKY: So what year -- I'm sorry, your

1 Honor, but I'm confused at the years that the government is
2 talking about.

3 MR. LAUD: 2016 through 2018.

4 THE COURT: Okay. But I had thought based on the
5 written filings that what the probation office proposed was to
6 say his admission was that he on and off since 2008 has been
7 dealing and on average, it's four ounces of cocaine per week.
8 And so then the probation office said, all right, even if only
9 two years out of that ten years is considered because he
10 did -- he did say in the post-arrest that it was on and off.
11 All right. So even if you take one-fifth of that time, you
12 get to 11 kilograms by multiplying out four ounces over -- per
13 week for a two-year period of time.

14 So is that the methodology that the probation office
15 used?

16 PROBATION OFFICER FOWLIE: I believe you're correct
17 in your assessment, your Honor.

18 (Pause.)

19 THE COURT: Okay. All right. So let me invite the
20 probation officer who authored the report to announce her
21 appearance. I believe she just joined the phone conference.

22 PROBATION OFFICER KIRIKLAKIS: Yes, your Honor. Good
23 afternoon. Kathy Kiriklakis, U.S. Probation.

24 THE COURT: Okay. And then, so Officer Kiriklakis,
25 can you tell me whether I accurately set forth how you got to

1 11 kilograms?

2 PROBATION OFFICER KIRIKLAKIS: Your Honor, I
3 apologize. I joined a few minutes late because I was in
4 another hearing.

5 THE COURT: Yes. So the presentence report proposes
6 about 11 kilos of cocaine as relevant conduct. And I had
7 thought, but please correct me if I'm wrong, that the way you
8 arrived at that was to say in his post-arrest statement,
9 Mr. Usmani admitted that since around 2008, he had been on and
10 off dealing cocaine and that on average, he dealt four ounces
11 per week which if you multiply that out over 104 weeks, which
12 is two years, to try to use a conservative estimate in light
13 of the fact that he said it was on and off, that you get to 11
14 kilos that way.

15 So is that the methodology you used?

16 PROBATION OFFICER KIRIKLAKIS: Yes, your Honor. That
17 is what we used.

18 THE COURT: Okay. So then I think the question,
19 Mr. Laud, is if that is the methodology that generates the 11
20 kilos, then do we have enough information about what the
21 dealing was like in 2008 and 2009 and so on?

22 MR. LAUD: Your Honor, I think I misunderstood what
23 the probation office intended. I took two years to mean the
24 time period after he was arrested in the state case which in
25 his post-arrest interview, he acknowledges disrupted him for a

1 time period, he was not running this operation, and then he
2 resumed.

3 There was not an indication in that interview that
4 after he resumed that it was interrupted or the business, you
5 know, wasn't running pretty much consistently during that time
6 period. So I was focused on the two years leading up to his
7 arrest in this case. The state case, there's a fair amount of
8 description in the PSR. And I think there was some discussion
9 of it in the post-arrest interview as well discussing the use
10 of dispatch drivers and things like that.

11 Going back to 2008, I agree with your Honor, I don't
12 think that there is evidence in the record to suggest that
13 conduct in 2008, 2009 were well before his arrest on the state
14 case was similar in character to what he was arrested for
15 here. So that was not what the government was intending to
16 rely on and didn't rely on his delivery driver operation which
17 resumed after his arrest on the state case.

18 THE COURT: Okay. Then I think I'm not sure that
19 that four ounces per week applies to this shorter time period
20 that you are focused on. And, yes, even just the other pleas
21 and what people were saying they delivered, can you really get
22 to four ounces a week?

23 MR. LAUD: So I think so, your Honor. Another way of
24 getting at this same question is to look at the seizures
25 during the wire period. And so that's on Page 6 of the

1 government's memo. So if we look, we have a total of the
2 defendant receiving about 2.1 kilograms of cocaine over the
3 two months of wire interceptions. So it's another way of
4 getting at that.

5 And again, I excluded that larger quantity just
6 because it, you know, could have been a one-off as opposed to
7 part of his regular course of dealing. And then that would
8 support a quantity of 6.4 kilograms in 2018 alone
9 extrapolating those -- January through March from the wire
10 interceptions across the rest of the year.

11 So I think when you look at what was detected on the
12 wire interceptions it's -- I think defendant's estimate was a
13 good estimate and is consistent with what. It comes out
14 actually very close because 6.4 times two to get to the two
15 years would be 13 kilograms, just a little bit more than what
16 defendant estimated.

17 MR. PISSETZKY: I learned yesterday from watching the
18 debate not to interrupt, so I'm waiting patiently.

19 THE COURT: Yes. Please continue to wait patiently.
20 I just want to understand like the probation officer's and the
21 government's theory before getting your two cents.

22 So you're basically taking the two months of wire
23 interceptions which yielded around 2.1 kilos of cocaine and
24 then multiplying that over two years?

25 MR. LAUD: Well, I'm using it to corroborate

1 defendant's statement. I mean, absent defendant's statements
2 that that's how it worked and that it was consistently about
3 this quantity, I wouldn't simply multiply that out over that
4 time period. But I'm saying that when you look at the
5 snapshot in time when you have a really comprehensive view of
6 what his activities were from the wire interceptions, that's
7 consistent with the estimate of the per-week quantity that the
8 probation officer used in the probation officer's calculation.

9 And I apologize for the confusion of it being any two
10 years within that time period. I thought we were talking
11 about the two years at the end leading up to the arrest in
12 this case, but I think either way the estimate is accurate and
13 consistent with what we saw Mr. Usmani doing during the period
14 of wire interceptions.

15 THE COURT: Yes. I mean, I guess if the four ounces
16 per week, if that was accurate as an estimate, then why didn't
17 I see larger drug quantities with respect to the
18 co-defendants, the drivers that were helping out and so on?

19 MR. LAUD: So the drivers were largely a rotating
20 cast of characters, your Honor. And then we only had the
21 drivers held accountable for the cocaine that they actually
22 distributed. So at any given time, there were three or four
23 drivers, sometimes more, sometimes less. So they then also
24 have a corresponding fraction of the cocaine because they're
25 only -- they were only held accountable for the cocaine that

1 they delivered.

2 And for most of the drivers, we only had evidence
3 regarding the two months or so that we had wire interceptions
4 in the case. So it was a narrower period of time. And in
5 addition, it was a slice of Mr. Usmani's conduct. And then,
6 you know, the drivers that were charged in this case were not
7 necessarily the same people who were driving for him, you
8 know, in the previous year. Some drivers did cover a larger
9 time period, but others were not.

10 THE COURT: All right. Mr. Pissetzky?

11 MR. PISSETZKY: Your Honor, first and foremost,
12 relevant conduct is -- and it's straight out of 1B1 point --
13 1.3, is all acts and omissions committed, aided, abetted,
14 counseled by, caused by the defendant and jointly undertaken
15 criminal activity that were within the scope of the jointly
16 undertaken criminal activity, in furtherance of that activity,
17 and reasonably foreseeable in connection with that activity
18 that occurred during the commission of the offense of
19 conviction.

20 Now, what we have here, and the government just
21 admitted to it, it could have been another conspiracy. It
22 could have been other conduct that might -- that Mr. Usmani
23 had -- was doing and he admitted to during his very long
24 statement and then a proffer that we had with the government.

25 And incidentally, if the government is agreeing with

1 what Mr. Usmani is saying, I'm not sure why they have been so
2 resistant in agreeing to give him a 5K(1) reduction because
3 they tell me on the one hand --

4 THE COURT: A 5K(1)?

5 MR. PISSETZKY: Yes, a cooperation agreement because
6 I took him in to cooperate. And he gave them a full
7 statement --

8 THE COURT: Here. One second.

9 Officer Kiriklakis, are you still there?

10 PROBATION OFFICER KIRIKLAKIS: Yes, your Honor. I
11 am.

12 THE COURT: Okay.

13 MR. PISSETZKY: He gave the statement, the
14 post-arrest statement, which was very detailed, and then he
15 gave --

16 THE COURT: Can I just interrupt you for a moment
17 because I don't -- obviously, I have no authority to require
18 the government to enter into a 5K. And he's not safety valve
19 eligible, right?

20 MR. PISSETZKY: He's not safety valve.

21 THE COURT: So that's not really an issue as to what
22 Mr. Laud's personal feelings are about his -- the defendant's
23 credibility one way or the other. And it's also easy to
24 imagine that for inculpatory statements that increase his
25 liability that they are willing to believe that because it's

1 an admission against interest whereas other statements are
2 not. So let's skip that part, please. And also, please do
3 focus on --

4 MR. PISSETZKY: I'm --

5 THE COURT: -- not so much the jointly undertaken
6 activity because we're not talking about a vicarious liability
7 situation here. It's whether or not this is part of the same
8 course of conduct or common scheme or plan. I don't think
9 it's common scheme or plan. At most, it would be same course
10 of conduct under 1B1.3. So that's the pertinent form of
11 relevant conduct.

12 MR. PISSETZKY: Right, but --

13 THE COURT: So for that, I do -- I am concerned that
14 I don't know enough about the other dealing that makes up all
15 these 11 kilos to tag Mr. Usmani with it. I do have some
16 concerns about that.

17 MR. PISSETZKY: Right. And so just as a simple
18 example, your Honor, the government claims that the suppliers
19 for Mr. Usmani -- and they all pled guilty. Their plea
20 agreements are all in public record, and I printed them all
21 out and they were all before you.

22 His suppliers, there are three suppliers. Juan
23 Dominguez, Ron Allen or Ronald Allen, and Neil Bowen, they
24 admitted that they were supplying Mr. Usmani between January
25 2018 and March 2018. The government did not provide any other

1 information, not to me or anybody else, that they were
2 supplying Mr. Usmani prior to that or for a period of two
3 years or whatever the government is claiming today. In their
4 plea agreements, they agreed to the amount of drugs that they
5 supplied Mr. Usmani during the time that they were supplying
6 him.

7 Now, I believe the government would agree that the
8 drivers would drive the drugs that Mr. Usmani was supplied by
9 these individuals. So if you take a look at their plea
10 agreements, Dominguez admits to a total of 916 grams. Ronald
11 Allen agrees to a total of --

12 THE COURT: 735.

13 MR. PISSETZKY: -- 735.

14 But if you look at the examples in the actual plea
15 agreement, there's only 319 grams. But even if we take the
16 735 --

17 THE COURT: Yes, that's because he doesn't have the
18 concrete examples, but he admits it's at least 735.

19 MR. PISSETZKY: Right. And then Bowens supplied my
20 client twice for a total of 742. That's 2.3 kilos which is,
21 if you look at Mr. Usmani's statement where you take, let's
22 say you believe he made \$10,000 a week and he -- which means
23 100 grams per week multiplied by 23 weeks, that's 2.3 kilos.
24 It's the exact amount of drugs that Mr. Usmani admitted in his
25 statement and his suppliers admitted that they provided him

1 which shows that that's exactly what he got within that period
2 of time.

3 There is no other -- and the government is trying to
4 extrapolate or add more. There isn't any more. There's
5 nothing that the government provided us to show that there is
6 more, that it was from the same suppliers. I think in his
7 statement, he talks about different suppliers that he had
8 years ago.

9 He also admits that Tony Cayuela stole the majority
10 of his clients. And towards those 23 weeks of the indictment,
11 he wasn't doing much. The fact was that he had to call
12 somebody -- the CI which is what the government arranged for
13 this half a kilo deal on February 1st of 2018, Mr. Usmani
14 couldn't get it for weeks where finally he was able to get
15 that on February 1st. And he had to go through two people,
16 Kevin Slaughter and Neal Bowens, to get it. And then he
17 couldn't even get rid of it because they still found drugs in
18 his apartment that were sitting there.

19 So it is actual proof that Mr. Usmani was not
20 concentrating or was not selling drugs as he may have done in
21 years past, before his state case, or whatever it was in the
22 past. But for the purposes of this criminal activity that he
23 was charged in this case --

24 THE COURT: Yes. So let me just interrupt again.
25 It's -- the government is not saying that for the criminal

1 activity charged in this case that the quantity exceeds the
2 2.3 kilos. What the government is saying is that under the
3 guidelines, because conduct that is part of the same course of
4 conduct can qualify as relevant conduct and, therefore, it has
5 to be considered under the guidelines.

6 So for conduct to qualify as the same course of
7 conduct, it need not be the charged conspiracy. It does,
8 though, have to have a sufficient degree of similarity,
9 regularity. Some kind of overlap in geography is helpful.
10 You know, the type of drugs is also helpful.

11 And I -- without the post-arrest statement, I do have
12 some concern that I cannot make this finding where it hooks
13 the -- that admittedly he's admitting that it's an average of
14 four ounces per week. But at least as presented to me right
15 now, that was when he was talking about this on and off ten
16 years.

17 MR. LAUD: Your Honor, and I think I can clarify that
18 somewhat by what's summarized in the government's version of
19 the offense. And if we want to go beyond what's in the
20 government's version of the offense, then I suppose I would
21 ask for the opportunity to bring certain parts of the
22 recording to your Honor's attention.

23 But when he talks about that whole time period, and
24 this is on Page 7 of the government's offense, he doesn't say
25 that it's four ounces per week over the entire time period.

1 He discusses his earlier time period around 2009 and discusses
2 it being a much larger quantity then, approximately nine
3 ounces per week earning \$25,000 gross income per week.

4 And then he says in more recent years, he sold an
5 average of four ounces per week charging about \$100 per gram
6 and about \$10,000 gross income per week. So he is consistent
7 with the other evidence in this case I believe discussing in
8 that time period his more recent drug dealing activities.

9 And I do want to respond briefly to Mr. Pissetzky's
10 point about the suppliers and what they supplied him because I
11 think we're actually in agreement on this. And I believe it
12 supports the government's position. Those suppliers did not
13 make admissions covering time periods beyond the time period
14 of wire interceptions. Mr. Pissetzky is absolutely right that
15 we did not give Mr. Usmani a cooperation deal and as a result,
16 we are not in a position to use Mr. Usmani's admissions
17 against those other individuals.

18 And one more point on that. I think that the common
19 thread here is Mr. Usmani and his retail distribution
20 operation, and the suppliers are just that. They are the sort
21 of source of influx. And so I don't believe for it to qualify
22 as relevant conduct that he would have to have the exact same
23 suppliers. If we were talking only about, you know, sort of
24 large wholesale deals, I could see that argument but here,
25 we're talking about an ongoing course of dealing.

1 With respect to his, what I would describe as almost
2 like a side business of brokering these larger transactions,
3 the ones involving the cooperating source, that is talking
4 about obtaining a much larger quantity of cocaine. As set
5 forth in the government's version, to keep the retail
6 operation operating, Mr. Usmani needed a few ounces at a time,
7 maybe four and a half ounces, that type of thing. Now we're
8 talking about 500 grams.

9 And so it's not surprising that when he steps outside
10 of his usual business that it takes a little more time, but he
11 was able to obtain that cocaine. And we know again that's
12 part of ongoing conduct because he offered to do it back in
13 October of 2017. That's also set forth in the government's
14 version. Ultimately, that transaction didn't go through. The
15 one in 2018, in February of 2018 did, and then the wire
16 interceptions followed.

17 So I think that all corroborates the concept that
18 Mr. Usmani -- and I'll talk about this in 3553 factors. He's
19 not getting a cooperation deal here, but I think he deserves
20 credit for being forthright during that interview about the
21 scope of his drug dealing, estimated the rate of which he sold
22 drugs very consistently with the objective evidence about the
23 rate at which he sold drugs which we've now talked about three
24 or four different ways. And even over just that two-month
25 time period in early 2018 gets us to right around 2 kilograms

1 of cocaine.

2 If your Honor is concerned about it, I'm happy to
3 detail the evidence showing that he was engaged in that course
4 of conduct both after the wires and before the wires, but that
5 is already, you know, a third of the way there to the five
6 kilograms that triggers this higher threshold.

7 So I think that Mr. Usmani's statements are detailed
8 enough. I understand your Honor's concern, and if you'd like
9 the government to highlight particular portions of that
10 statement and play the recordings at a hearing, I would be
11 happy to do that. I will be frank, I'm not prepared to do
12 that today, and so I would ask for a short continuance in
13 order to be able to do that. But I think what is in the
14 record supports the probation officer's determination just
15 relying on these two years after the state offense.

16 And I apologize. One more thing as a footnote.
17 Mr. Usmani did proffer. Nothing I'm saying today is based on
18 the proffer. I'm only relying on what he said in the
19 post-arrest interview.

20 THE COURT: Okay. So yes, I don't think a
21 continuance is warranted in light of the fact that, you know,
22 he already has to quarantine when he goes back and to do that
23 again is I think not fair to him. And his family is here as
24 well. And so we just have to live by -- just as I would do to
25 the defense, if you don't have quite all the ammunition, you

1 know, ready for today's hearing, then that's the way it goes,
2 and we just need to move forward today.

3 The other thing I will say is that a lot of this
4 discussion revolves around whether or not this is relevant
5 conduct. And specifically, I do think it's whether it's part
6 of the same course of conduct. That does not mean that I'm
7 disabled from considering other drug dealing based on his
8 post-arrest statement for 3553 purposes.

9 And this is one of those rare times where something
10 doesn't qualify for a -- for guidelines purposes that the fact
11 that the guidelines are not advisory -- or are advisory now
12 ends up potentially not working in the defendant's favor. You
13 know, usually the advisory guidelines, it works in the
14 defendant's favor because now you overlay 3553 and almost
15 always, at least in this district and my practice is it ends
16 up being lower than the guidelines sentence.

17 But here, even if it's not relevant conduct, I can
18 take into account the fact that there is a post-arrest
19 admission, which I know you've resisted and I've read your
20 filing on that, but that there is other drug dealing that is
21 not relevant conduct but under 3553, I can consider that in
22 light of the fact I have to consider his personal history and
23 the risk of recidivism and so on.

24 MR. PISSETZKY: I agree with you.

25 THE COURT: All right. So I do think even with the

1 explanation that the government has just provided, the fact
2 that there is a lack of precision -- and obviously, this is
3 just all reasonable estimates and it's a preponderance
4 standard. But there is a lack of precision on what that --
5 these four ounces per week was going to. You know, more
6 recent years is also still kind of fuzzy.

7 And I don't think that even on preponderance that
8 there is -- I have sufficient factual detail to connect this
9 other drug dealing from the post-arrest statement to the
10 actual count of conviction. Like I said, I can consider it
11 for 3553 purposes, but I don't think that the relevant conduct
12 satisfies, that standard is satisfied.

13 What that means is -- and again, I've read the
14 written filings on this, that what the defendant has conceded
15 as 2.3 kilos, which is the way I get there is that
16 Mr. Dominguez's plea to 916 grams. And the plea, I do credit
17 the under-oath plea. It is under oath. He did not get a
18 cooperation deal. So every gram that he puts on himself in
19 that plea agreement increases his exposure. So there's very
20 good reason to credit the admission in the plea.

21 Mr. Allen said 735 grams at the least. That's also
22 in an under-oath plea, not a cooperation deal. And so again,
23 he's hurting himself by increasing the number of grams. So I
24 take that as true as well by a preponderance. And that's 1.65
25 kilos.

1 Now, technically because the defendant pled to the
2 conspiracy, even the Bowens deals has to be considered
3 relevant conduct. That is relevant conduct, though, because
4 that overlaps the time period exactly in this early 2018 time
5 period. It's cocaine. The deal happens at Mr. Usmani's
6 condo, you know, where cocaine was discovered in March of
7 2018. So I don't think there's any question that that is
8 relevant conduct. That actually gets it up to 2.1 kilos of
9 cocaine and --

10 MR. LAUD: Your Honor, I apologize. I don't mean to
11 interject -- well, I did interject. I apologize for
12 interjecting. It won't change the guideline range if you're
13 going where I think you are, but if we are calculating it in
14 this way, then I do think that the 558 grams recovered from
15 Mr. Usmani's condo in March of 2018 should also be separately
16 added in.

17 I had not included that for the risk of double
18 counting with his estimate when we were relying on his
19 estimate, but that cocaine does not appear to have come from
20 Mr. Dominguez or Mr. Allen who never admitted to supplying him
21 in that quantity. So I -- it won't change the guideline
22 range, so maybe it's a moot point.

23 THE COURT: Right. My --

24 MR. LAUD: But there's an additional 558 grams of
25 cocaine during that time period.

1 MR. PISSETZKY: Your Honor, I'm not sure -- I don't
2 have it in front of me, but I don't believe -- was it ever
3 tested? Because my understanding is that it was cut.

4 MR. LAUD: It was tested. I don't know the -- off
5 the top of my head how diluted it was, but I do know that that
6 doesn't matter for the sentencing guidelines.

7 THE COURT: But is it the case that -- so he brokered
8 the 492 gram deal on February 1 with Bowens, but was he -- and
9 then the CS, the CS took all of that.

10 MR. LAUD: The CS took all of that, your Honor.
11 That's correct.

12 THE COURT: So then it can't come from there. Okay.
13 And it can't come from -- right. It can't come from Dominguez
14 or Allen because they were not supplying in those quantities.

15 MR. LAUD: And, your Honor, maybe I don't need to ask
16 you to make a finding on that because you're at 2.1, and that
17 would put us at 2.6 roughly which is within the same guideline
18 range. So I think maybe I'll just note it as additional
19 support for the calculation I believe your Honor is about to
20 make.

21 THE COURT: Okay. All right. So that's a base
22 offense level of 26 then based on the 2.1 kilos of cocaine.

23 All right. On the gun increase, again, is there
24 anything that either side wants to highlight?

25 MR. LAUD: Only, your Honor, that in calls about the

1 gun, there's reference to it being fully loaded, calling it a
2 pull. It's not simply referred to as a burner. So I don't
3 dispute that a burner could be referring to a burner phone,
4 but for the reasons set forth in the briefing, I think it's
5 pretty apparent that it was referring to a gun here.

6 THE COURT: All right. So let me ask you the --
7 because I do think based on that wiretap affidavit despite the
8 arguments that the defense made at least in the written filing
9 that clearly Mr. Usmani and the courier are talking about a
10 gun. In fact, the courier even says the words, like, "I can't
11 keep doing this, this shit without no gun," all right, when
12 he's talking about that someone had took -- taken stuff from
13 him.

14 So the crucial question, though, is whether or not
15 Mr. Usmani actually ended up providing a gun. And the crucial
16 paragraph on that in the wiretap affidavit is Paragraph 33.
17 And I understand there's some calls after the fact, but the
18 calls are certainly probable cause that there was a gun
19 transfer from Mr. Usmani, but whether it's a preponderance is
20 a closer question.

21 And so let me -- if you don't have that wiretap
22 affidavit in front of you, Paragraph 33 says, "Based on
23 interceptions over Target Phone 1 and information provided by
24 a confidential source, CS-5" -- and there's a footnote, but
25 that just describes the criminal history of CS-5 -- "I believe

1 Usmani and Individual A met inside Subject Premises 1 that
2 evening to conduct a narcotics transaction and transfer the
3 above-described firearm supplied by Cayuela." So and then
4 there's the call afterwards which says that, "I got the pull."

5 But, you know, as the defense points out, it is a
6 little odd for him to announce back to Usmani that he got
7 the -- he got the firearm when supposedly he got the firearm
8 from Usmani as part of that drug deal. So Paragraph 33, that
9 is kind of fuzzy there because it just says "on information
10 provided by CS-5." What information?

11 MR. LAUD: Your Honor, I agree with what you're
12 saying. I think if we were only dealing with that firearm, it
13 would be a closer question, but there's the second gun, the
14 gun that was stored by Mr. Usmani in the home of Lisa Usmani
15 where Mr. Usmani would store and package narcotics, plus the
16 fact that if a courier is driving around for Mr. Usmani
17 carrying a gun, even if he obtained that gun from somebody
18 other than Mr. Usmani, I think that that is -- you know,
19 that's very much foreseeable to Mr. Usmani, he was trying to
20 get it for him.

21 So I think the most straightforward way to actually
22 get to the enhancement and the one that I think is the most
23 significant is the gun that was recovered from Lisa Usmani's
24 home. I acknowledge that her admission that Mr. Usmani
25 provided it to her is -- could be considered self-serving. I

1 think it is self-serving. It wouldn't be good for her if it
2 were her gun. But when you talk -- when you look at the fact
3 that Mr. Usmani has -- you know, clearly, I find the
4 characterizing it as an attempt. I think the agent's
5 conclusion was probable cause, but I understand your Honor's
6 concern.

7 His attempt to provide a gun to a courier, the fact
8 that that courier did end up with a gun and then that the gun
9 stored at Lisa Usmani's home, a place where Mr. Usmani also
10 stored narcotics, also packaged narcotics, also had Lisa
11 Usmani package narcotics which she admitted, shows that he
12 possessed firearms as part of this offense.

13 THE COURT: Yes, my -- I do have a concern as you've
14 identified and predicted that Lisa Usmani did have an
15 incentive to try to put the gun on Mr. Usmani because
16 obviously, it was found in her actual residence and so -- and
17 she's cooperating. And so she does have this incentive to put
18 the gun on him. And, of course, as usual there are no
19 fingerprints and no ownership records that would otherwise
20 connect the gun to Mr. Usmani.

21 And it's -- you know, I think a reasonable jury, like
22 if you went to a jury on this kind of question, they might
23 find if you have enough circumstantial evidence when you
24 combine these two things, but they are -- they are different
25 events. And one is very specific to mid-January 2018 and

1 then -- yes, and so I don't know if there really is a
2 sufficient connection so that you can kind of combine them as
3 circumstantial evidence and get over the preponderance
4 standard.

5 Like I said, this is easily probable cause, you know,
6 that there was a transfer from Mr. Usmani to this courier, but
7 I don't know whether it's a preponderance. And then the idea
8 that this unidentified courier, I have some concern there that
9 to then hold Mr. Usmani vicariously liable for that gun being
10 possessed in connection with the offense.

11 All right. Mr. Pissetzky, do you want to say
12 anything?

13 MR. PISSETZKY: Your Honor, it seems like you read my
14 submissions. The only thing I want to point out is that even
15 the phone call with Tony Cayuela that the government points
16 out didn't happen right after this alleged courier asked for a
17 pull. It happened five hours later. So it wasn't even -- and
18 then this courier calls ten days later to tell Mr. Usmani, "I
19 have a pull."

20 So the lingo is different. The timeframe is very
21 long in between. And like I said in my submission and you
22 said as well, why would this person call my client and tell
23 him, "I have a pull" if he just gave it to him?

24 THE COURT: Yes. I mean, that's a fair point. I
25 mean, the counterpoint is that it's almost like social working

1 here because he -- the courier is complaining about, you know,
2 he's got a family, "I can't get robbed like this, it's really
3 dangerous," and then Mr. Usmani offers the gun. I don't know
4 whether he actually transferred it, but the -- it could be the
5 courier just saying -- because he literally says, "I'm back on
6 track, you know. I got the pull."

7 So it's almost like he's giving feedback back to the
8 guy who maybe provided the gun as like, look, you know, it's
9 almost -- that's like a thank-you. However, that is missing
10 from the call that, you know, "I got the pull. Thanks for
11 that." There's no -- there's nothing else reflecting in that
12 call that suggests that Mr. Usmani actually provided that gun.
13 And I would have expected something like that.

14 And yes, it's plumbing the depths of the psychology
15 of someone who we don't even know who that person is to
16 explain why it is he'd be telling Mr. Usmani about the gun.
17 It's very unstable ground.

18 MR. LAUD: Your Honor, if I could just return to the
19 gun that was in Lisa Usmani's home. I think that the
20 change --

21 MR. PISSETZKY: Mr. Usmani never packaged anything in
22 her house. He wasn't -- he doesn't even remember the last
23 time he was at her house, and there's no timeframe for -- and
24 she never gives a timeframe of when he supposedly gave her
25 this gun.

1 MR. LAUD: I think she did, your Honor. And I have
2 to consult the filing. I believe it was actually fairly close
3 in time to when it was recovered.

4 Your Honor, I'm not going to rely on the date because
5 it doesn't appear in the PSR, but I'll just note I think the
6 gap in time between January and December here would be much
7 more significant if we were saying it was the same firearm.
8 The question is, is Lisa Usmani's statement that it was
9 Mr. Usmani's firearm credible, acknowledging, of course, that
10 she has some motive to lie. It is Mr. Usmani who runs the
11 drug operation. It is Mr. Usmani who has previously at a bare
12 minimum attempted to procure a firearm for a courier. It's
13 Mr. Usmani who has acknowledged that a courier, you know,
14 should have a firearm if he wants one.

15 And as your Honor noted, I think, you know, again
16 this is not a case at trial but your Honor gestured, I
17 believe, towards the jury box and said could a jury putting
18 these two things together conclude that there was enough
19 circumstantial evidence. I think when you step it back to the
20 standard of a preponderance of the evidence here, it does meet
21 that threshold based on the actual physical gun that was
22 recovered on takedown day from the home of Lisa Usmani.

23 THE COURT: All right. Yes. I mean, my reference to
24 the jury was not to elevate the standard of -- the burden of
25 proof but to, that you have to carry the -- only to say that

1 reasonable minds can differ on this, I think. Like, yes,
2 another judge in this courthouse looking at this evidence may
3 very well say that, yes, you've done it by a preponderance,
4 but I am reluctant to do those -- to do so because for all the
5 reasons I've stated in terms of the credibility issues with,
6 you know, a cooperator plea that where a defendant is stuck
7 with that inculpatory evidence because they possessed it in
8 their house and now they do have a natural incentive to try to
9 blame someone else. And the calls just don't really lay out
10 that the transfer actually happened from Mr. Usmani.

11 Okay. So I understand why you made the argument, and
12 there was certainly probable cause in the wiretap affidavit to
13 lay that out, but I'm going to reject the gun enhancement as
14 well. All right. Because I have rejected that as a factual
15 matter and not because of some guidelines principle, then this
16 will not factor into the 3553 analysis.

17 So that leaves us with the offense level being -- the
18 base is 26. Four levels are added for organizer/leader of a
19 criminal activity, five or more participants. That's an
20 offense level of 30. Three levels are taken off for
21 acceptance of responsibility. So that's a total adjusted
22 offense level of 27.

23 So based on those findings, is that square with the
24 government's calculations?

25 MR. LAUD: Based on those findings, yes, your Honor.

1 THE COURT: All right. And then Mr. Pissetzky?

2 MR. PISSETZKY: Yes, Judge.

3 THE COURT: All right. On the criminal history
4 category, I don't think there was any objection there. And
5 the 2001 -- I'm sorry. Let's just go over the ones that
6 picked up points.

7 So possession of 15 grams or more of cocaine picked
8 up one point. The 2017 delivery of cocaine picked up one
9 point. And then two points are added because he was on
10 probation for the 2017 delivery at the time of this offense.
11 So that's four points. That's criminal history category III.
12 So the advice of the guidelines is 87 to 108 months.

13 Okay. Let's hear 3553 factors from the government
14 first.

15 MR. LAUD: Yes, your Honor. I suppose I need to
16 start by adjusting my recommendation in light of your Honor's
17 findings. And while I think a sentence within the previously
18 called-for guideline range would be the right sentence, I
19 think it would actually represent a substantial variance from
20 the advisory guidelines sentence your Honor has calculated.

21 So in light of that, I'm going to suggest that your
22 Honor impose a sentence of 120 months which is the sentence
23 that is recommended by the probation officer because I think,
24 you know, that would only be modestly above the guideline
25 range that your Honor has calculated. And I don't think I'm

1 in a position to ask for a substantially above-guidelines
2 sentence.

3 THE COURT: Yes, although the probation officer
4 recommendation was also in light of the --

5 MR. LAUD: No, I agree, your Honor. But I think on
6 the substance, we're going to be in a very similar place
7 because -- I'll talk about the offense more generally but, you
8 know, as to which drug trafficking counts as relevant conduct
9 and which does not, at the end of the day there's little doubt
10 that Mr. Usmani has been a very substantial drug dealer for a
11 very long period of time and importantly, a period of time
12 that was interrupted by a state arrest and conviction for an
13 offense as set forth in the PSR, dispatching drivers to make
14 retail cocaine deliveries, very, very similar to the offense
15 that he was convicted of here and which had no impact on his
16 behavior whatsoever. In fact, as set forth in the sentencing
17 memo and some of the excerpts and the wiretap calls is
18 essentially something that Mr. Usmani mocked.

19 This is a very serious offense. This is an offense
20 of exploitation. And Mr. Usmani exploited just about
21 everybody who crossed his path. The most obvious and most
22 significant are the addicts that he sold the drugs to. And
23 your Honor has commented before at sentencings on what a
24 staggering quantity of doses this amounts to. And that's
25 certainly true even of the more cabined drug quantity your

1 Honor found as relevant conduct. And it's certainly true
2 under 3553 when you look at the amount of drug dealing that
3 Mr. Usmani has admitted doing.

4 And I think it's fair for the 3553 factors to look
5 beyond the two-year, the two-year excerpt of 11 kilograms but
6 to look at the entire time period and to look at the fact that
7 Mr. Usmani also admitted that at times, he was selling
8 substantially more drugs than the rate that he was selling at
9 the time he was apprehended for this offense.

10 That represents a staggering quantity of harm to the
11 community. And it's over a very extended period of time,
12 which is aggravating. It's greatly aggravating because this
13 is not a mistake. This is not being the victim of
14 circumstances. This is not something that was done at a, you
15 know, particularly stressful time in Mr. Usmani's life or when
16 he was under particular external pressures.

17 This was done as a way of life to make money and to
18 live a lifestyle that Mr. Usmani was very proud of, whether
19 it's bragging about being the grandfather of drug dealing on a
20 wiretap call or, you know, sitting down -- and I absolutely
21 believe he should get credit for forthrightly acknowledging
22 his drug trafficking in the post-arrest interview, but for
23 laying that all out on the table; whether it's, you know,
24 driving, you know, the Mercedes G wagon, the flashy SUV, or
25 the Mercedes sedan that he bought for his girlfriend, Wesam

1 Fattah, one of the co-defendants in this case; the music
2 videos which were self-aggrandizing in which he, you know,
3 invested substantial proceeds.

4 It was a flashy lifestyle. It was a lifestyle that
5 Mr. Usmani wanted to live. And that's why he exploited those
6 drug addicts to whom he was selling drugs.

7 But it wasn't just the addicts. If you go one step
8 up the chain to the drivers, look at the people that
9 Mr. Usmani used. And I think "used" is the right word.
10 They're responsible for their own actions. They've pled
11 guilty. They received punishment from this court. They've
12 been sent to prison in many instances or deported from this
13 country, but they were used by Mr. Usmani. They were used to
14 be on the front lines to be the ones who are far more likely
15 to get arrested. I mean, this is an investigation that really
16 doesn't lead back to Mr. Usmani unless there is a sustained
17 long-term investigation. Otherwise, you just see one guy with
18 a relatively small quantity of cocaine making a delivery. So
19 that insulates Mr. Usmani. Many of the drivers were without
20 legal status, were not financially well off, were dependent on
21 him.

22 Mr. Usmani exploited, I think it's very clear,
23 Mr. Trotter, a man in poor health as your Honor acknowledged
24 who at times was homeless. And Mr. Usmani used him to run for
25 a very short period of time but used him to operate that drug

1 trafficking business right out of Mr. Usmani's condo.

2 He used his ex-wife and the mother of his child. He
3 had her package narcotics for him. He used Wesam Fattah
4 who -- you know, it's been a while since your Honor had her
5 before the Court but I'll just remind you was a woman who was
6 here without lawful status from Jordan. Clearly, I think from
7 her statements, they're credible, didn't have any, you know,
8 involvement in drug trafficking before getting to know
9 Mr. Usmani, and he used her to run his business. He used his
10 own brother, Nafees Usmani, who wound up being prosecuted in
11 this case, to run that business.

12 It was a business of exploitation. The proceeds
13 overwhelmingly flowed to Mr. Usmani. And, you know, we will
14 not ever be able to account for every penny, every dime, but I
15 think the government's version in the sentencing memo sets
16 forth where some of the money went, whether it's into
17 vehicles, into properties and, frankly, just in supporting a
18 lifestyle that -- you know, whether it's traveling to go to
19 the all-star weekend or going out to nightclubs, the money
20 gets spent, but the money was going to Mr. Usmani or to the
21 people that Mr. Usmani chose to support.

22 And I will acknowledge that he definitely chose to
23 support his ex-wife, his children, I think his immediate
24 family, his parents and his brother and to some extent as well
25 and, you know, so but it was -- there's no doubt about it, it

1 was Mr. Usmani's money to do with as he pleased.

2 It's not an offense that comes from an addiction to
3 drugs or from this very significant trauma that your Honor had
4 before you in the case of Mr. Sabih. It's a grown man,
5 frankly a middle-aged man who had every reason to know better
6 who's doing this for self-aggrandizing reasons. So it's a
7 very serious, very serious offense.

8 I want to spend a little bit of time just talking
9 about Mr. Usmani's history and characteristics. I think the
10 most significant thing is that that state drug case because
11 that should have been a wakeup call. I mean, he -- despite
12 being insulated from the consequences of his actions, he was
13 caught. He was prosecuted and, I mean, he came out of that
14 case very well. He came out of that case with probation and a
15 chance to, you know, put his life on the right track. And I
16 think he even came out of it sort of a little bit removed from
17 the lifestyle in that his phone with his customers in it, he
18 had lost control of. Mr. Cayuela had that.

19 So it wasn't a situation where he was like thrust
20 back immediately into the same lifestyle without, you know,
21 interruption, had no opportunity to reflect, no opportunity to
22 make another conscious choice. And the conscious choice he
23 made was to rebuild his empire. That's what he did.

24 And, I mean, there are references to this in the wire
25 affidavits but to customers where he's actually going back and

1 forth, and they're saying, "I can get it cheaper from Tony,"
2 and, you know, he's saying, "Don't mess with Tony, mess with
3 me." I mean, he's trying to win back those same customers.
4 He's trying to rebuild that business that was disrupted when
5 he was arrested by the State. That's a very deliberate course
6 of conduct that he engaged in.

7 He has, you know, other significant offenses, be it
8 the residential burglary or a prior cocaine conviction going
9 back to 2008. He was on probation, like actually under the
10 supervision of the court, while he was engaged in this
11 offense. So I think that is significant aggravation here.

12 Mr. Usmani is not a United States citizen. And so I
13 think he may be deported. As we've discussed at prior
14 sentencings, this is an aggravated felony. I don't know
15 exactly what the options are for Mr. Usmani who has lived here
16 for -- since high school essentially, so for a long period of
17 time where his family is here.

18 But I think, unlike some of the other cases where
19 your Honor viewed the risk of deportation as a significant
20 additional punishment that would warrant a reduction in
21 sentence, Mr. Usmani is not somebody who there's any reason to
22 believe would be victimized or attacked or any of the other
23 horrible consequences that potentially faced some of the other
24 defendants to come before your Honor for sentencing.

25 So I think that this is not a case where Mr. Usmani's

1 immigration, you know, situation really warrants a reduced
2 sentence. I mean, he has made his choices. He's made his
3 choice to engage in this conduct even though it could result
4 in him being deported. Other members of his family have
5 naturalized. He did not. And so this is the position he
6 finds himself in, but I don't think that is a significant
7 factor in mitigation.

8 And regarding the firearm, I thought carefully about
9 what your Honor just said. And I don't want to go against
10 your Honor's ruling, but I think that vignette, that back and
11 forth with the courier and then the very casual conversation
12 that followed five hours later with Mr. Cayuela, the fact that
13 a firearm was found in the home of a co-conspirator, even if
14 we are not holding Mr. Usmani responsible for that firearm for
15 the purposes of the sentencing guidelines highlights another
16 aspect of the seriousness of this offense which is that drug
17 trafficking on this scale always accompanies the potential for
18 violence.

19 I acknowledge in the sentencing memo and I want to
20 say it out loud again here today, apart from incidents of
21 domestic violence, Mr. Usmani did not use violence as part of
22 this offense, but the risk that comes around when you have
23 people moving large quantities of drugs, when you're dealing
24 with suppliers who move large quantities of drugs, when you're
25 storing large quantities of drugs, there is an attendant risk

1 to society that, you know, is part of why drug trafficking is
2 such a more serious crime than merely the possession of drugs
3 or the use of drugs. You know, that does carry significant
4 risk. And I respect your Honor's decision not to impose the
5 guideline enhancement, but I think that the presence of
6 firearms in this case isn't a factor that can be totally
7 ignored either.

8 So your Honor acknowledged, I think, in reaching the
9 drug quantity finding that this is a case where 3553(a)
10 factors could, you know, actually support a sentence in excess
11 of the advisory guideline range as calculated because so much
12 drug quantity, which I don't think there's any serious dispute
13 that the trafficking actually occurred. I mean, I don't hear
14 Mr. Usmani to be walking back his post-arrest statement.

15 For the reasons I articulated earlier, I think it's a
16 well-corroborated post-arrest statement in terms of whether
17 drug trafficking on the scale that he estimated occurred. And
18 I understand your Honor's ruling to be more focused on, can we
19 say it's sufficiently tied to this offense to count as
20 relevant conduct.

21 So in light of that, I think going up to a 120-month
22 sentence, which I believe would be the high end of the
23 advisory guideline range immediately above the one your Honor
24 just calculated -- and I'll consult my book again just to be
25 sure. But we were at -- I'm sorry. Yes, we are at 87 to 108,

1 so if we go just one level up, Level 28, to 97 to 121, you
2 know, a ten-year sentence, 120 months, would actually be
3 within a guideline range that's just one offense level higher
4 than the guideline range your Honor calculated. I think a
5 sentence of that -- of 120 months would be perfectly
6 appropriate here.

7 And frankly, I do think, your Honor, it's difficult
8 in light of Mr. Usmani's recidivism, in light of the fact that
9 he was the kingpin in this case, in light of the fact that he
10 bragged about that and engaged in that conduct after having
11 been caught before, I really believe, your Honor, that it
12 would not be appropriate to go below that. That really, I
13 think as always we're looking for a sentence sufficient but
14 not greater than necessary to meet the 3553(a) factors in this
15 case.

16 THE COURT: All right. Thank you. Just on
17 co-defendant disparity, so that would be doubled basically the
18 highest other sentence because Mr. Dominguez and Mr. Allen, it
19 looks like -- well, Mr. Allen it's a definite, everyone is
20 asking for 60 months at this point. And Mr. Dominguez,
21 there's some issue that has cropped up, but the government is
22 seeking the 60 months there.

23 So do you think the -- that doubling his is
24 appropriate?

25 MR. LAUD: Absolutely, your Honor. Those defendants

1 are, first of all, responsible under the guidelines but also,
2 there's not going to be 3553 aggravation evidence as to a
3 larger drug quantity presented as to those defendants. So
4 they're, first of all, responsible for a fraction of the drug
5 trafficking.

6 Second, each of those defendants operated, you know,
7 on their own or they may have had suppliers of their own, but
8 there's absolutely no evidence that they had workers or an
9 organization underneath them. Mr. Usmani had a very
10 significant organization underneath him involving, you know,
11 several drivers, sort of the frontline workers, as well as
12 additional people he roped in to perform specific tasks,
13 whether it's assisting with packaging or handing out the drugs
14 or handling the phones at various points in time.

15 And then, you know, the -- I mean, the -- I think
16 there will be evidence introduced as to Mr. Allen that he has
17 from time to time in his life returned to drug trafficking.
18 It is certainly not his first offense, but the evidence that
19 it was a way of life, I mean, Mr. Usmani freely admits that he
20 was deriving significant income. He was supporting his
21 family. He was making his music videos. He was buying flashy
22 cars. He was doing all of these things with the proceeds that
23 he amassed over a significant period of time with this as a
24 way of life.

25 And I think that when you factor all of those things

1 together, he's significantly more culpable than the other
2 defendants. I did not have qualms about asking for a
3 guideline sentence when the guidelines were higher on the
4 co-defendant disparity issue, and now that we're talking about
5 a 120-month sentence, I think that that step is not at all in
6 conflict with 3553(a)(6).

7 THE COURT: All right. Thank you.

8 Mr. Pissetzky?

9 MR. PISSETZKY: Maybe I should start where the
10 government finished. That five-year disparity in sentence is
11 almost unheard of but especially in this case where it's the
12 suppliers that the government agrees to a five-year sentence
13 but the person who was supplied with the drugs, they ask for
14 more.

15 Now, I have never heard the government say in the 20
16 years that I've practiced that the suppliers who were able to
17 get kilos of cocaine supposedly, these were their only
18 transactions and they have not done this before. I doubt if
19 it was Ron Allen's only customer. I doubt if Mr. Dominguez
20 only provided in his drug life career 916 grams to Mr. Usmani,
21 and that's it.

22 THE COURT: Yes, the question is whether there's
23 evidence, though, that would meet the preponderance standard
24 and is reliable of quantities beyond that. And here, there is
25 the post-arrest statement.

1 MR. PISSETZKY: And that's my next point.

2 Mr. Usmani was -- gave the government a statement,
3 post-arrest statement, and afterwards went in to cooperate and
4 sat down in an interview with the government and the agents
5 because he wanted to help the government, because he provided
6 them with information about other individuals, because he
7 answered all their questions. Yet he's getting no credit and
8 the government almost ignores the fact that not only he gave a
9 post-arrest statement but he wanted to cooperate and gave them
10 other information that they could have used or not used or
11 whatever it is that they want.

12 I don't understand to this day because I have not
13 been explained why the government agreed to sit down and
14 potentially have this cooperation meeting but later on never
15 provided us with the cooperation. I have not received an
16 answer to that, your Honor.

17 But Mr. Usmani sits here today able and willing to
18 continue to cooperate with the government which tells a lot
19 because you have to look at rehabilitation, recidivism, and
20 deterrence, specific deterrence. And I think --

21 THE COURT: Let me just -- do you want to put
22 anything on the record?

23 MR. LAUD: I do, your Honor. And I don't want to get
24 into anything that Mr. Usmani said in the proffer but I -- and
25 I don't have authority to do that either. I think it's fair

1 to say, though, the proffer letter was very clear and the
2 statements made leading up to the proffer were very clear as
3 they always are that just coming in for a proffer is not an
4 agreement to cooperate. So I think it is clear that the
5 government has not breached any agreement with Mr. Usmani if
6 that's the suggestion.

7 I respectfully disagree with Mr. Pissetzky's
8 statement that it wasn't explained to him why Mr. Usmani did
9 not get a cooperation reduction. It was explained to him both
10 by the attorneys assigned to this matter. He also came in and
11 met with the criminal chief in the office and pitched a
12 cooperation deal, and that was rejected and there was an
13 explanation that followed that.

14 THE COURT: All right.

15 MR. LAUD: And I just -- I don't believe that
16 Mr. Usmani based on that proffer put himself in a situation
17 where we could use him as a cooperator. I'm not asking that
18 the proffer be held against him. I'm asking that he do get
19 credit for having been forthright with the government in his
20 post-arrest statement, but the government is not making a 5K
21 motion here, and we're not making a 5K motion in good faith
22 just as we met with Mr. Usmani in good faith.

23 And so I don't see how that can be a reason to
24 essentially say that the government has taken advantage of
25 Mr. Usmani in some way by having him sit down for that

1 proffer.

2 MR. PISSETZKY: Your Honor, I did not say that the
3 government breached their agreement with Mr. Usmani, but
4 obviously Mr. Usmani didn't breach his agreement with the
5 government where he was supposed to be and was truthful with
6 the government and --

7 THE COURT: All right. But you are saying that
8 you've never been given an explanation. The government says
9 that you have. They're obviously trying to not put things on
10 the public record that might actually harm him. So I take
11 your point that he came in and he tried to cooperate. And I
12 will take that into account. So you can move on to the next
13 argument.

14 MR. PISSETZKY: And so when you look at avoiding
15 disparity in sentencing, such a disparity is not warranted in
16 this case. And we're asking for the five-year mandatory
17 minimum which is the same amount of time that the government
18 is asking for the suppliers in this case.

19 Now, as far as his criminal history, your Honor,
20 Mr. Usmani never did any prison sentence. So a five-year
21 prison sentence is going to be a very long prison sentence for
22 Mr. Usmani. He received -- like the government said and as
23 you see in the PSR, he received probation for his prior
24 charges and prior acts, and that is the reason why he was in
25 criminal history III, and that's the reason why he got -- he

1 received two more points when you calculated the criminal
2 history for being on probation when he committed this crime.

3 And so that has been taken into account already when
4 you calculate the criminal history. He is in criminal history
5 III. And when you look at his criminal history and you see
6 that he has not been in prison before and this is going to be
7 his prison sentence, a 60-month sentence is a very long
8 sentence. And that's what we're asking for.

9 Mr. Usmani, his parents -- he was born in
10 Afghanistan.

11 THE DEFENDANT: Yes.

12 MR. PISSETZKY: And when he was five, his parents
13 left to come to the United States but left him behind where he
14 was left with an aunt and uncle that were supposed to take
15 care of him but did not take care of him and, in fact, abused
16 him.

17 Once he arrived here in the United States around the
18 age of 10, not during high school but at the age of 10, he was
19 put in a scenario that he was -- he had to take care of his
20 siblings because his parents would be working all day long.
21 So from a very young age, he was abused and then put in a
22 scenario where he was supposed to become an adult at almost
23 the -- around the age of 10. Despite that, your Honor, he was
24 an honor roll student when he was in school. And you heard he
25 just received his GED now.

1 And he is a successful musician. And recently before
2 his arrest, in a way he became a You Tube sensation when he
3 came out with a song with a very well-known rapper, Twista.
4 So the potential for rehabilitation that Mr. Usmani has is
5 enormous.

6 He does have -- so when he married Lisa, Lisa had
7 three kids. And he basically took them and raised them as if
8 they were his own. And then they had two more biological
9 children. The turning point, unfortunately, for Mr. Usmani in
10 his life was when they lost their son shortly after he was
11 born. That's when his marriage to Lisa spiralled. That's
12 when he started drinking heavily, started using drugs like
13 marijuana and cocaine.

14 They eventually divorced at 2014 but at that point,
15 they had financial trouble. They didn't even have money to --
16 for the funeral of the burial for their young son that just
17 passed away. And it took a great toll on Mr. Usmani
18 psychologically, physically, and emotionally. And that's when
19 things started going downhill for him, unfortunately.

20 Now, when Mr. Usmani -- and the government is
21 describing the people that worked with Mr. Usmani as his
22 victims as well and that he exploited them. Look, they're all
23 adults. They were all adults that knew Mr. Usmani. It was
24 his brother. It was his ex-wife. It was his girlfriend.
25 They went into it with their eyes open. And they went into it

1 willingly and not being exploited. They're all adults that
2 made decisions. They all -- they're all adults that, as
3 Mr. Usmani was helping the family, they were working together,
4 unfortunately.

5 So it's -- he is not different than them and they are
6 not different than him in that perspective which also goes
7 into avoiding disparity in sentencing. When Mr. Usmani wasn't
8 in Chicago around the month of February of 2018, his brother
9 took over. His brother and Mr. Trotter took over the drug
10 dealing.

11 They had a choice. They didn't have to do that.
12 Mr. Usmani was never violent. Mr. Usmani was not violent
13 against them. Mr. Usmani did not have guns. Mr. Usmani did
14 not threaten them to do it. They did it. And so when you're
15 sentencing Mr. Usmani, you have to look at disparity in
16 sentencing as they are compared to these individuals as well.

17 As far as recidivism and rehabilitation and the
18 future for Mr. Usmani, your Honor, he did cooperate, as I told
19 you. He is working on changing his life. He has gotten his
20 GED. He has worked very hard at the MCC to better himself.
21 He has a very loving and supportive family that is still here,
22 and they're all in the courtroom.

23 And most importantly, despite being here since the
24 age of 10, Mr. Usmani will be deported. And I'm not sure
25 where the government gets their information, but he was born

1 in Afghanistan. He will be deported back to the country that
2 he was born in, despite the fact that his entire family is
3 going to stay here because they're citizens here. And when
4 they arrived here, they arrived here on a political refugee
5 asylum. So he will be sentenced and then deported to a place
6 where he does not know anybody, has no family. And his
7 family, in fact, escaped from there because they were
8 persecuted.

9 MR. LAUD: Your Honor, can I just ask for a point of
10 clarification? My understanding from the PSR and the
11 investigation is that Mr. Usmani is a citizen of Pakistan and
12 that he was born in Afghanistan but the Pakistani citizens, in
13 fact, a Pakistani diplomat, I believe, or somebody -- you
14 know, his father had some role in the government and that as a
15 result, he has Pakistani citizenship and that they later
16 traveled to Yugoslavia and to the United States.

17 So I am not aware of any indication that Mr. Usmani
18 would be -- has any claim to Afghani citizenship or would be
19 sent to Afghanistan. And if that is the case, I'd just like
20 to make sure that that's well developed for the record.

21 MR. PISSETZKY: So, your Honor, Mr. Usmani was born
22 in Afghanistan. He is -- was not a Pakistani citizen. His --
23 and currently, he is a green card holder that gets extended
24 every ten years because of his status as a political refugee.
25 However, at this point, he cannot become a United States

1 citizen. So by operation of law, he will be deported to the
2 country that he was born in, which is Afghanistan.

3 THE COURT: Well, he would be returned to the country
4 where he holds citizenship, and you're saying that he does not
5 hold Pakistani citizenship.

6 MR. PISSETZKY: Correct. That's based on the
7 information that I have. In fact, I don't think he -- at this
8 particular time, he doesn't have a passport or hold
9 citizenship anywhere in the world except for a visa or a green
10 card from the United States. And he has never visited --

11 THE DEFENDANT: Pakistan or Afghanistan.

12 MR. PISSETZKY: -- these countries in his life. He's
13 been here. So the sentence that -- whatever sentence you're
14 going to give him, your Honor, when he gets deported, he is
15 going to go to a completely foreign country where as we all
16 know, whether it's Pakistan or Afghanistan, the conditions in
17 either place are not ideal.

18 THE COURT: Yes. Well, he did live in Pakistan
19 before immigrating here.

20 THE DEFENDANT: When I was --

21 MR. PISSETZKY: When he was before ten -- between the
22 age of zero and ten.

23 THE COURT: Right.

24 MR. PISSETZKY: Yeah. So, I mean, he is a lot older
25 today, Judge.

1 THE COURT: Yes.

2 MR. PISSETZKY: All right. So the sentence is going
3 to be very, very harsh because this is his family. They're
4 all here, Judge.

5 Now, finally, I want to talk about his health and our
6 current situation, which is the COVID situation. And it's a
7 very scary situation. We're all sitting here in court at
8 least six feet apart. We all are wearing masks. There are
9 COVID-positive people, thousands of them, every day and just
10 recently in this courthouse, a couple days ago, I believe.

11 The CDC has -- if you go on the CDC website,
12 cdc.gov/coronavirus, there is a very handy chart that
13 indicates factors that increase community spread and
14 individual risks, COVID-19 associated hospitalization related
15 to underlying medical conditions. And it indicates that
16 crowded situations, as we know, increase the risk of
17 individual risk and hospitalization. Close physical contact
18 increases it. In close places increases it and duration of
19 exposure.

20 These are the normal -- these are the main four
21 factors. As you know, all these factors exist in a prison.
22 There's no way to avoid crowded situations, close physical
23 contact in close places and a very long duration of exposure
24 if your Honor is even going to sentence Mr. Usmani to a year.

25 Then the CDC says, risk for hospitalization if you

1 have any of these conditions and get COVID compared to people
2 without these conditions. And it lists the conditions that
3 increases the risk of COVID and hospitalization beyond the
4 first four that I provided you with. And hypertension, which
5 Mr. Usmani is suffering and is taking medication for,
6 increases the risk by three times. Obesity increases the risk
7 by three times. And diabetes, again which Mr. Usmani has,
8 increases the risk by three times.

9 So Mr. Usmani has three of these conditions that
10 further increases the risk by three times, but the CDC says
11 that if you have three or more of these conditions, your risk
12 is increased by five times at least of getting hospitalized or
13 being hospitalized due to COVID and possibly suffering severe
14 consequences from it; if not death, then very long-lasting
15 consequences. Mr. Usmani is obese. Mr. Usmani has
16 hypertension. And Mr. Usmani has diabetes.

17 Your Honor, I cannot ask you for to give him less
18 than five years because that's the mandatory minimum. Any
19 sentence -- and under 3553, you have to consider, one of the
20 things that you must consider is whether or not they'll be
21 able to sufficiently provide him with medical care and keep
22 him safe. The answer is no.

23 And so in addition to thinking about disparity in
24 sentencing, thinking about lack of recidivism here, the fact
25 that he cooperated, the fact that he did have a very traumatic

1 life and now will be deported which will continue to make his
2 life even more dramatic, you have to look at the medical
3 condition and the lack of safety that the Bureau of Prisons
4 will be able to provide for Mr. Usmani because we don't have a
5 vaccine. And prisons are dangerous.

6 And so, your Honor, I would ask you to sentence
7 Mr. Usmani to, unfortunately, the only -- the minimum that you
8 can, which is 60 months.

9 THE COURT: All right. Thank you.

10 Before we get to the allocution, let's talk about the
11 supervised release conditions. Even though deportation is
12 virtually guaranteed, there's a mandatory minimum, so we still
13 have to go through it.

14 MR. PISSETZKY: Unless you find that supervised
15 release will not be necessary.

16 THE COURT: I think because of the mandatory minimum,
17 I have to. This is one of those -- if there's no mandatory
18 minimum, I think I can say, yes, I'm not going to impose any
19 supervised release, but I think I have to because there's a
20 mandatory minimum.

21 MR. PISSETZKY: I'm not sure. I don't know. Maybe I
22 misread the way that the Seventh Circuit ruled on that --
23 those issues. But I thought that you can waive it if we think
24 that he will be deported. However, I don't have any
25 objections to these conditions because --

1 THE COURT: Okay. He's not going to serve them?

2 MR. PISSETZKY: Right.

3 THE COURT: Well --

4 MR. LAUD: Your Honor, what I propose then is we
5 could have a sort of bare bones set of conditions including, I
6 believe there's a special condition -- although he would
7 likely be deported directly from prison -- about, you know,
8 cooperating with any removal. And then, you know, I don't
9 know that we need to go through each and every condition. If
10 that --

11 THE COURT: Okay.

12 MR. LAUD: -- changes, I suppose we could always come
13 in and ask that his conditions of supervised release be
14 modified.

15 THE COURT: All right. Well, let me ask the
16 probation office, if there's a mandatory, statutory mandatory
17 minimum, I do have to impose a term of supervised release,
18 right?

19 PROBATION OFFICER FOWLIE: That would be my
20 understanding as well, your Honor.

21 THE COURT: Okay. So let's do this --

22 PROBATION OFFICER KIRIKLAKIS: Your Honor, Kathy
23 Kiriklakis, U.S. Probation. On Page 24 at Paragraph 103, 102
24 and 103, I list the statutory and the guidelines range for
25 supervised release. It is required in this case.

1 THE COURT: Yeah. I'm pretty sure I can't waive it.
2 However, given that deportation is basically guaranteed, let's
3 do this. On the mandatory conditions, Mr. Pissetzky, do you
4 have any objections to -- this is on Page 24.

5 MR. PISSETZKY: No.

6 THE COURT: 1 -- okay. 1, 2, 5, and 6.

7 MR. PISSETZKY: No objection.

8 THE COURT: All right. So those will be imposed.
9 And there is a prior cocaine use which justifies No. 6.

10 Then let's just go ahead and turn to Page 27. Is
11 there any objection to No. 21?

12 MR. PISSETZKY: No.

13 THE COURT: All right. So 21 will be imposed so that
14 the defendant will surrender to a duly authorized official of
15 the Homeland Security Department for a determination on the
16 issue of deportability by the appropriate authority in
17 accordance with the laws under the Immigration and Nationality
18 Act and the established implementing regulations. If ordered
19 deported, you shall not reenter the United States without
20 obtaining in advance the express written consent of the
21 Attorney General or the Secretary of the Department of
22 Homeland Security.

23 Okay. And then I think we can just hold off on
24 everything else.

25 PROBATION OFFICER KIRIKLAKIS: Your Honor, if I may,

1 again, Kathy Kiriklakis, U.S. Probation. We have had a few
2 instances where individuals were not automatically deported
3 and I believe were released on some sort of immigration bond.

4 If possible, could we please request discretionary
5 condition 15 that he shall report to the probation office just
6 in case for some reason Immigration does not automatically
7 report to him -- to deport him so we can know where he is.

8 THE COURT: Okay. All right. We'll add that one as
9 well. All right. Thank you.

10 PROBATION OFFICER KIRIKLAKIS: Thank you.

11 MR. LAUD: And, your Honor, just so the record is
12 clear, I think it is, if that were the case, the government
13 might file a motion to impose sort of additional conditions,
14 the ones necessarily attendant to supervision like, you know,
15 meeting with the probation officer, reporting contact with law
16 enforcement. And so I just want to make clear I'm not waiving
17 the idea that that those are needed if he's on supervised
18 release.

19 MR. PISSETZKY: That's understood, your Honor.

20 THE COURT: Yes, that's fine. If he makes bond then,
21 of course, I would expect a motion.

22 Okay. Mr. Usmani, now is your time to speak on your
23 own behalf. So you may go ahead and do that.

24 THE DEFENDANT: Your Honor, I have prepared a letter.

25 THE COURT: All right. Go ahead.

1 THE DEFENDANT: To the most Honorable Judge Edmond
2 Chang, thank you, your Honor, for granting me the time and
3 opportunity to show this Court how remorseful I am for my
4 actions which led us all here today before you.

5 With respect to this court, your Honor, I would like
6 to address my family and all who are present. Your Honor, I
7 stand before you guilty for my actions, guilty for my
8 decisions, and guilty for all my wrongdoings. I disregarded
9 sound advice from those I love and chose a path of
10 self-destruction, a path that I'm truly ashamed of today.

11 I cannot go back and turn back the hands of time, but
12 I can assure you that I will do my best to educate my children
13 and the youth in my community and prevent them to ever follow
14 the path I was on and persuade them to make lifestyle choices
15 for their betterment as individuals and to become productive
16 members of our society. At this point, all I can do is
17 respectfully hope that this Court will be satisfied with this
18 judgment in my case and know that without a shadow of a doubt
19 how truly sorry I am because I really am sorry, your Honor.

20 I'm sorry for not doing better in making poor life
21 choices. I was ignorant and arrogant. I involved my friends
22 and family. I involved the mothers of my children. It was
23 because of me and me alone that my whole family has gone
24 through a tremendous amount of pain and suffering. I caused
25 enormous embarrassment. And this weighs really heavy on my

1 soul. And I do not want to be known to my friends and family
2 as an outcast for all that I have done and indulged in. And I
3 look forward to the day I can redeem myself in my family's
4 name.

5 Your Honor, being incarcerated for the past 22 months
6 has not only saved my life from the drugs and alcohol, it has
7 also brought me closer to my god, Allah, and my religion. I
8 have fasted for the months of Ramadan and prayed five times a
9 day asking for forgiveness for my sins and my deeds.

10 While incarcerated I participated in programs such as
11 Parenting for Fathers, Total Body Fitness, and I completed my
12 GED, your Honor. I have also taken this time to reflect what
13 I want to accomplish in life. I have set my goals that I will
14 pursue by hard work and effort. I have taken personal
15 inventory of everything I will change in my life. Although
16 change does not come overnight, it is a slow process, and as
17 painful as it might be, it is very essential for my growth and
18 development into a new man, a pursuing man with dedication and
19 purpose, goal oriented and determined to be better, for I can
20 live a precise life and provide for my children.

21 Your Honor, I ask that you consider my future and
22 respectfully grant me the opportunity to show you better than
23 I can tell you what I intend to accomplish in my future. All
24 I need is for this Court to grant me the tools necessary to
25 reach my goals whether it be programs that fit my needs or

1 whatever this court deems appropriate for me to participate
2 in.

3 My future is in your hands, Judge Chang. Please
4 grant me leniency and give me a chance to do right by my
5 family and help me become a man of great integrity and honor.
6 Thank you, Judge.

7 THE COURT: All right. Thank you, Mr. Usmani.

8 MR. PISSETZKY: May I run to the restroom real quick?

9 THE COURT: Yes, you may.

10 (Pause.)

11 THE COURT: All right. We're back on the record.

12 Mr. Usmani, federal law tells judges what we have to
13 consider in picking a sentence. I do have to consider the
14 nature and circumstances of the crime that you committed. And
15 I consider your personal history and background.

16 Then I'm supposed to try to achieve certain goals of
17 sentencing and pick a sentence that is enough but not more
18 than necessary to achieve those goals. The goals include
19 providing for just punishment. The sentence must reflect the
20 seriousness of the crime. I have to try to promote respect
21 for the law. I also have to try to provide for something
22 that's called deterrence. And there are two forms of that
23 under the law: General deterrence, which is just sending a
24 message out generally to the public to not commit this kind of
25 crime; and then specific deterrence, which is giving a

1 sentence that is enough to specifically encourage you to not
2 commit any other crimes.

3 I have to consider the protection of the public. I
4 consider needs like rehabilitative, medical, vocational needs.
5 That can only ever push a sentence down, though. That can't
6 ever be a reason that a sentence gets higher.

7 I have to consider the advice of the sentencing
8 guidelines. I have to try to avoid unwarranted disparities.
9 And you've heard a little bit about that today. I ought to
10 treat you the same way I treat anyone else with the same kind
11 of personal history that you have and has committed the same
12 kind of crimes that you have committed. And it also means
13 that when sentencing you relative to the other defendants in
14 the case, I am trying to just slot everyone into the right
15 spot in terms of culpability and all the other relevant
16 factors. So those are all the goals and factors that I have
17 to consider in picking a sentence.

18 On the nature and circumstances of the crime, it is a
19 serious crime. What you're being held responsible under the
20 sentencing guidelines is for a little over two kilograms of
21 cocaine. And because each individual dose of cocaine is about
22 a tenth of a gram, that represents thousands and thousands of
23 individual doses.

24 And you just think about the extreme societal harms
25 that drug use has on our society at large, but you think about

1 it on the individual basis. That means thousands of times
2 that someone used this substance, this poisonous substance and
3 worked harms on their personal lives, on their professional
4 lives, and on the lives of their families. So this is why
5 drug dealing is just a very serious crime, and it's one that
6 we have been dealing with for decades and decades and probably
7 will be fighting for decades to come.

8 You also, I do believe that you did deal in much more
9 than just the two kilograms that I found you responsible for
10 under the guidelines. You did make this post-arrest
11 statement. There is a reason why we usually credit what's in
12 a post-arrest statement because you are speaking against your
13 very own interest, so you have every reason, if you're going
14 to make an admission against yourself, to speak truthfully
15 about that and to not exaggerate.

16 So in the most defendant-friendly, the most innocuous
17 interpretation of your post-arrest statement, from 2008 for
18 about ten years on and off, you sold on average four ounces of
19 cocaine a week. And, you know, as the probation officer had
20 proposed, if we just take one-fifth of that time, then you
21 sold in this time period something around 10 kilos, maybe 11
22 kilos of cocaine. That's not in addition to the 2.1. This is
23 a grand total.

24 And I do take that into account when I consider
25 things like your risk of repeat offense because you had been

1 doing this, on and off to be sure, but you had been doing this
2 on and off for over a decade by the time that you got caught.
3 And so this is part of your personal history, too, that you
4 were willing to sell this -- that quantity of drugs over that
5 quantity of time.

6 Now, having said that -- and this is kind of a sad
7 and tragic point to make these days, it just shows you the
8 extent of the drug crime in our country -- 10 or 11 kilos over
9 10 years is not the most prolific drug dealer actually. It's
10 one kilo a year basically which again as a grand total, it is
11 very serious. It is, sad to say, not very prolific when it
12 comes to federal court cases.

13 All right. Leaving the drug quantity, you are the
14 most culpable defendant in this particular case because you
15 are the organizer and leader of this drug business. It really
16 was a drug business. It's getting supplies of a good and then
17 selling that good and then delivering that good and then
18 picking up money for those deliveries. It was a drug
19 business, and you organized and you led it.

20 Mr. Pissetzky says, well, you should be on about an
21 equal level of culpability with the suppliers, but no.
22 Sometimes suppliers are sentenced to less time than those to
23 whom they sell because of various circumstances, and many of
24 them apply here. One is you did organize this drug business,
25 and so that is more damaging to society because you were able

1 to create this efficient operation of drug dealing.

2 Second is your criminal history. That does factor
3 into the -- your culpability here. And so there are a variety
4 of reasons, some of which I will talk about, in aggravation
5 where a drug seller may very well get more than their
6 supplier.

7 With regard to your co-defendants, I have now
8 sentenced ten of them with Mr. Allen and Mr. Dominguez coming
9 up. And the way I see you and your co-defendants, there are
10 basically two lower-level tiers of sellers and couriers and
11 also people who helped out just for a week or so. And so many
12 of those, the defendants in the lower-level tier got sentences
13 of a day or just a few months.

14 And then there's another tier that they were getting
15 about a one-and-a-half-year sentence. And then there is
16 Mr. Allen and Mr. Bowens and Mr. Dominguez, basically
17 suppliers. And then there's you at the top. And you are at
18 the top here.

19 Mr. Allen and Mr. -- well, Mr. Allen for sure,
20 essentially as certain as I can be, is heading for a 60-month
21 sentence because everyone is asking for that at this point.

22 Mr. Dominguez, it looks like he's going to try to ask
23 for under the 60 months but, you know, as far as I can
24 estimate, based on the 916 grams that he has sold, even if he
25 is safety valve eligible, he would most likely receive

1 something in that neighborhood.

2 And so I am keeping an eye out for the fact that what
3 the government has requested would be double the sentence of
4 anyone else in the case. And so I do take that into account
5 in mitigation, but please let there be no mistake that you are
6 the most culpable defendant in this case.

7 Mr. Pissetzky talks about the others who are involved
8 and that they were adults, they made their own decisions.
9 Here's the thing. Nafees Usmani, your brother; Steven Trotter
10 who was homeless and needed a place to stay and had very
11 serious health issues; Lisa Usmani; Wesam Fattah, yes, they're
12 adults and they make their own decisions. They would not have
13 committed a drug crime if you had not asked them.

14 And that's based on all four of those individuals. I
15 sentenced them. I've looked at their character and their
16 past. They would not have committed these crimes without you
17 asking them. So that is how you are more culpable in getting
18 them involved, despite the fact that, of course, they're
19 adults and they made adult decisions, and they paid a price
20 for it.

21 You did plead guilty to the crime. You have accepted
22 responsibility. Now, when I look at your personal history, it
23 does include your criminal history. It would be naive of me
24 to think that despite the rehabilitative steps that you've
25 taken -- and I do think that you should be praised for taking

1 those steps, earning the GED. Those are important steps to
2 take. But I do have to look at your criminal history too.
3 And it does include a prior conviction for possessing more
4 than 15 grams of cocaine. And it even includes a conviction
5 for delivery of cocaine for which you were on probation at the
6 time that you committed this offense. And I'm afraid that
7 that tells me that there is a very serious risk that you would
8 reoffend if I gave you too low of a sentence.

9 It's true, you haven't done any time in custody but
10 for many defendants, walking into that state court -- well,
11 getting arrested in the first place for drug dealing let alone
12 then being prosecuted and found guilty for it and getting a
13 sentence for it, even a noncustodial one, would be a shock to
14 their system and that would be the end of it but
15 unfortunately, that is not what happened with you.

16 Now, on your personal history, your upbringing was
17 obviously very difficult. There was an abusive -- you
18 suffered from an abusive environment, but I don't see a direct
19 connection between that upbringing and when you were over 40
20 years old and you committed this offense.

21 The written filing mentions another very serious
22 trauma in your life in losing your infant son. I -- and no
23 doubt, that is traumatic. The connection between that tragedy
24 and this offense, I again don't see very much of a connection
25 there. I don't think that's where you turned down -- you

1 started going downhill and started selling drugs. Tragically,
2 many families encounter that kind of tragedy without them
3 turning into a substantial drug dealer. So I don't think
4 that's particularly mitigating.

5 Now, you have contributed greatly to your family.
6 Obviously, many have written letters in support, and your
7 siblings, too, are still standing by you. So that's to your
8 credit that your family is still supportive. It speaks to the
9 fact that you were supporting them and provided both financial
10 and emotional support.

11 MR. PISSETZKY: Your Honor, I'm sorry to interject.
12 But Mr. Usmani lost his son around 2005. And that's where his
13 downward spiral started. And I do believe that it has a
14 direct connection because that's when he started using drugs,
15 abusing alcohol, and that's what led to him starting selling
16 drugs.

17 THE COURT: Well, I said that he said that he started
18 selling around 2007 or 2008. And, of course, it is a tragic
19 event, and no doubt he was affected by it. But as I said,
20 most people do not then turn into substantial drug dealers for
21 a decade based on a tragedy like that. So I do not believe
22 that there is a direct connection, and it is not mitigating in
23 light of the fact that people, most people do not turn into a
24 drug dealer based on that.

25 With regard to the family separation, that is also

1 the most difficult part of any sentencing. The fact that you
2 are separated from your daughter and your son, your
3 five-year-old son who has, you know, special needs, it was
4 heartbreaking to read the letters written by one of your
5 sisters and your daughter wrote a letter, and it was
6 heartbreaking to read them describe how your son has been
7 reacting and affected by your absence.

8 I believe your sister wrote about how sometimes he'll
9 wake up in the middle of the night just calling your name.
10 That is -- it is absolutely heart wrenching. And I take into
11 account that you are being separated from them. And of
12 course, you have a one-year-old, a very young son with your --
13 with Ms. Fattah. And so I take into account the family
14 separation.

15 It must be said, not to take away from your
16 contributions to your family and not to take away from how
17 hard it is going to be to be -- continue to be separated from
18 them, but it must be said that it is -- it's a product of your
19 choices that you made. And people who deal in this kind of
20 quantity of drugs, they have to realize that that means
21 there's going to be family separation which you've been
22 suffering through these last almost two years.

23 There is hope for rehabilitation. I think you did
24 well in school. You had this music career going. And I think
25 anyone who can organize -- use their intelligence and work

1 ethic to organize this drug business can use it for positive
2 things. So there is some rehabilitative hope, and I take that
3 into account.

4 The deportation is somewhat mitigating here. Assume
5 the worst and that you would be deported to Afghanistan then,
6 you know, obviously life is going to be very difficult over
7 there. You will be separated. It's not going to be easy to
8 travel, even for your family to travel there to visit you. So
9 I do take that into account.

10 It's not quite as mitigating, though, as some of your
11 co-defendants who for reasons that are under seal, although
12 you might know about them, are going to face really difficult
13 circumstances returning to their countries of origin, but I do
14 take it into account.

15 On general deterrence, I just want to -- I'll just
16 say a few words on this. Your lawyer argued in the written
17 filing that these social science, social scientists have
18 determined that there's more deterrence effect in terms of
19 sending a message out to the community if a punishment is
20 certain rather than lengthy. And I've read, you know, these
21 studies.

22 And I don't think, first of all, that these studies
23 establish that the length of a sentence has no general
24 deterrence effect. It's just comparatively these social
25 scientists believe that certainty has more of a deterrence

1 effect, not that there's zero deterrence effect in a lengthy
2 sentence.

3 And really, the social scientists, they're making an
4 argument not so much to judges I think, but the argument
5 applies more to policymakers, that if you put more money into
6 policing and increase the chances of detection, that will have
7 a better deterrent effect than just imposing long sentences.
8 So it's not really something that I think is persuasive to me
9 in picking individual sentences.

10 Also, these studies, it is really hard to study
11 general deterrence. The studies involve things like, well, if
12 we tell everyone who violates a condition of probation they
13 would definitely get two days in jail, then they study the
14 effects. I think it was in Hawaii. And it looked like it had
15 a better deterrent effect. That, that there was a certain two
16 days as opposed to an uncertain longer period of time, I don't
17 know what conclusions to draw from that. And so it's -- and
18 other studies rely on comparing juveniles who are like 16 or
19 17 and then people who are just young adults at 18 and the
20 differences in deterrence there because juveniles tend not to
21 get prison sentences.

22 Again, I don't know what inferences to draw from
23 that. So I really think the social scientists have not made
24 the case that general deterrence does not work. And when I
25 say "general deterrence," it's not because the *Tribune* or

1 *Sun-Times*, they're not here, of course, but it's just the
2 people who know you, you know, your community. Every
3 defendant, their family and their friends and so on, they know
4 what the sentence is. And so that is where you could have
5 general deterrence effect even if it's not a high-profile
6 case.

7 And lastly, I have no doubt that if it became known
8 that the federal judges in the Northern District of Illinois
9 were giving slaps on the wrist for drug crimes that drug
10 crimes would increase. So I do have to account for general
11 deterrence.

12 Lastly, your medical condition. I am concerned with
13 the fact that you have these risk factors for COVID risk. And
14 although I didn't see the obesity actually in the presentence
15 report, you know, just from your height and weight, I can
16 understand why Mr. Pissetzky maybe is making that argument.
17 So I do take into account the risks of COVID and its impact on
18 you.

19 Even more generally, I have been giving every
20 defendant basically a discount for the fact that we're in the
21 middle of a pandemic. And I do believe that the BOP is
22 getting better, as all society is or at least all society is
23 learning how to deal with the pandemic better and try to
24 control it including in the prison setting, but some of these
25 controls make prison harder now. Like, prison time is harder

1 now than -- during a pandemic than even if you don't catch
2 the -- you don't get infected. So I take that into account.
3 And then again, you specifically have more of these risk
4 factors.

5 I do have to reflect the seriousness of this crime,
6 though, that you committed, the fact that you organized and
7 led all of these other defendants and got some of them
8 involved and they otherwise would not have been involved. I
9 have to account for the recidivism risk and the need for
10 deterrence, both general and specific.

11 So based on that, I do believe the appropriate
12 sentence is a sentence of 96 months of imprisonment.

13 Supervised release will be the mandatory minimum of
14 four years with the conditions that we discussed previously.

15 I will not impose a fine. I don't have a lot of
16 information on the financial condition, but at least based on
17 the credit report and other public databases, it does not
18 appear like Mr. Usmani has the ability to pay a fine. I do
19 have to impose the \$100 special assessment.

20 If you are going to appeal the sentence, you must
21 appeal within 14 days of entry of judgment on the docket. If
22 you can't afford the fees or costs of appeal, then you just
23 ask to have them waived. And if you can show that you can't
24 pay them, then they'll be waived. If you can't afford an
25 attorney on appeal, you can ask to have one appointed free of

1 charge. And again, if you can show that you can't afford one,
2 one will be appointed free of charge.

3 I will recommend the RDAP program. I'm not sure he
4 will qualify, but I will recommend that in light of the prior
5 substance abuse.

6 Is there a facility recommendation?

7 MR. PISSETZKY: Something close to Chicago, your
8 Honor. I'm not sure where he's going to be qualified.

9 THE COURT: All right. I'll ask that the BOP as
10 close to Chicago as possible.

11 All right. Is there anything else for the
12 government?

13 MR. LAUD: Just two matters, your Honor. One, the
14 government -- and I apologize because it was just filed this
15 morning. There's forfeiture alleged in the indictment that
16 follows from the events of conviction. So we filed a motion
17 for the preliminary order of forfeiture. And so we'd like
18 that order entered.

19 And there may be -- there were some administrative
20 claims filed with respect to one of the vehicles, so there
21 may -- if those people choose to persist in the claim, there
22 may be a further proceeding in front of your Honor with
23 respect to those, but we would seek that preliminary order of
24 forfeiture be entered.

25 And then there are two remaining counts of the

1 indictment, Counts 2 and 3, that the government would move to
2 dismiss.

3 THE COURT: All right. Those counts are dismissed.

4 Do you have any objection to the preliminary order of
5 forfeiture?

6 MR. PISSETZKY: No, your Honor.

7 THE COURT: All right. That will be entered as well.
8 Okay. Anything else for the probation office?

9 PROBATION OFFICER FOWLIE: No, your Honor.

10 THE COURT: And Mr. Pissetzky?

11 MR. PISSETZKY: No, your Honor.

12 THE COURT: Okay. Ms. Kiriklakis, is there anything?

13 PROBATION OFFICER KIRIKLAKIS: Your Honor, I will
14 prepare a statement of corrections with the Court's guideline
15 findings. And I understand there will also be a corrected
16 presentence report. And I will wait for notes and additional
17 information from Officer Fowlie and Mr. Pissetzky.

18 THE COURT: Okay. Very well. Thank you.

19 All right. So, Mr. Usmani, good luck to you. And
20 this sentencing is adjourned.

21 (Proceedings adjourned at 5:07 p.m.)
22
23
24
25

C E R T I F I C A T E

I, Judith A. Walsh, do hereby certify that the foregoing is a complete, true, and accurate transcript of the proceedings had in the above-entitled case before the Honorable EDMOND E. CHANG, one of the judges of said court, at Chicago, Illinois, on September 30, 2020.

/s/ Judith A. Walsh, CSR, RDR, F/CRR June 10, 2021

Official Court Reporter

United States District Court

Northern District of Illinois

Eastern Division